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NO. [redacted]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

Ralph L. Williams

VS

International Typographical Union, AFL-CIO, and Denver Typographical Union, a Local Union of the International Typographical Union - AFL-CIO

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provisions and Statutes Involved	7
Statement of the Case	7
Summary of Reasons for the Allowance of the Writ of Certiorari	19
Argument of Reasons for the Allowance of the Writ of Certiorari	21
Conclusion	51
Appendix A Infra One	A1
Appendix A Infra Two	B1
Appendix B Infra Three	C1

TABLE OF AUTHORITIES
CASES

	Page
King v. Randoza, 346 F.2d, 307	22
Riviello v. Journeymen Barbers, 240 P. 2d 361	24
Adams v. IBB 262 F.2d	29
Farowitz vs. Association of Musicians 330 F.2d 299	29
Smith vs. General Truck Drivers Union Local 467, 181 Fed. Supp. 14	29
Natl. Automotive Fibers, Inc. 121 NLRB 1358	33
Food Machine and Chemical Corp. 99 NLRB 1430	33
Electric Auto Lite Company 92 NLRB 1073 p. 14	33
Figuerosa vs. NMU (1965) 342 F.2d 400	33
Deluttery V. Maring Cook Union, 199 Fed. Supp. 27, 273	34
Gross V. Kennedy, 183 Fed. Supp. 750 (755-56)	34
Rekant V. Shochlay Gasos Union 305 Fed. Supp. 284	35

Page

Detroy V. American Guild 286 F. 2d 75 36

Parke V. International Brotherhood of Electrical Workers 314 F. 2d(886) 922 (1963). 36

Rekant V. Shocktay - Gasos Union 205 Fed. Supp. 284 37

Simmons V. Local 713 Textile Workers 350 F. 2d 1012. 38

Farowitz V. Association of Musicians of New York 330 F. 2d 999 38

Simmons V. Avisco TWU of America 350 F. 2d 1012 38

Simmons V. Local 713 Textile Workers (Supra) 39

Allen, v. Intl. Alliance of Theatrical, etc. 330 F. 2d 309. 39

Summers, "Legal Limitations on Union Discipline 64 Harvard L. Rev. 1049 1058-62 (1951) 39

CONSTITUTION AND STATUTES

There are no United States or State Constitutional provisions involved in this application for Certiorari

The applicable provisions of the Labor Management Reporting and Disclosure Act of 1959. 73 Stat. 519, 29 U.S.C. Sec 411, 531, are set out in Appendix B Infra Three.

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1970

Ralph L. Williams,
Plaintiff-Appellant

VS.

International Typographical Union, AFL-CIO, and Denver Typographical Union, a Local Union of the International Typographical Union - AFL-CIO,
Defendant - Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS TENTH CIRCUIT

RALPH L. WILLIAMS prays that a Writ of Cerborari issue to review the Judgment of the United States Court of Appeals of the Tenth Circuit rendered and filed on the 19th day of March, 1970.

OPINIONS BELOW

The Judgment of the United States District Court for the District of Colorado is appended

hereto (App. A Infra I of said Appendix).

The opinion and judgment of the U. S. Court of Appeals, Tenth Circuit, is appended hereto (App. A Infra 2 of said Appendix).

JURISDICTION

The Judgment of the United States Court of Appeals, Tenth Circuit was dated and entered on March 19, 1970. The Jurisdiction of this Court is invoked under 28 U. S. C. 1257(3). The validity and application of 29 U. S. C. A. Section 411 (a)(1)(3)(b) and (5) is involved and the Court of Appeals has decided an important question of Federal Law which has not been, but should be settled by the Supreme Court because of its effect on labor and management.

QUESTIONS PRESENTED

The questions presented are as follows, to wit;

A. Can a union, under the Authority of 29 U.S.C.A., draw a Constitution under which certain members are taxed twice by certain paragraphs thereof and are denied equal rights with other members of the same Union?

B. Do paragraphs of a Union Constitution, drawn under the authority granted by 29 U.S.C.A., violate a members equal rights and due process as guaranteed by 29 U.S.C.A. Sec. 411(a)(1)(3), (b) and (5), if the said paragraphs force him to pay Union dues twice and deny him priority (seniority)?

C. Can a Union lawfully classify this appellant or any other member of the Union in both, "Not at trade," and, "Working at trade," at the same time and force him to pay the Union dues on both catagories when he is working, "Full time" at the, "Union Shop" and also at another

job, (moonlighting at another job)?

D. Is the classification of "Not at trade," disciplinary and in violation of appellants equal rights and due process by the Union when applied, or in this case, against a member who is employed full time at the "Union Shop," but only because he has another job, and does the following language in the Union Constitution, drawn in apparant compliance with 29 U.S.C.A., give the Union the authority to so penalize a member?

CONSTITUTION of 1965

Article IX Section One, Paragraph 1, 2 and sub-paragraph a & b thereof are as follows, to wit:

Article IX - Revenue and Funds

Section 1. The revenue of the International Typographical Union shall be derived as follows: A per capita tax of $1.00 per month which

shall include subscription for The Typographical Journal, to be paid by every member of the International Typographical Union except those members domiciled at the Union Printers Home. The per capita tax, together with assessments as herein provided, shall be collected and transmitted to the Secretary-Treasurer of the International Typographical Union.

An additional assessment for the old age pension and mortuary funds according to the following classifications:

(a) Active members (including members working at the trade and seeking work at the trade)--Two and one-half percent upon total earnings.

(b) Active members not working at the printing trade (members whose cards are deposited with a subordinate Union who follow

other pursuits, and members not seeking work at the printing trade)--Two and one-half percent upon the maximum scale (for day work) of the union with which member is affiliated.

E. Can the Union use Article IX, Section 1, paragraph 1, 2 and sub paragraphs a & b above to deprive the appellant of his priority (seniority), voting rights and job bidding rights of other Union Shops as a punishment for moonlighting?

F. Can the Union force the appellant to make two contributions to the old age pension and mortuary funds, when he shall not get old, but once and shall not die but once, under the authority granted by 29 U. S. C. A. only because the appellant has a second job and as punishment therefor?

G. Is the imposition of the dual classification not really a fine imposed dues increase

and imposed upon the appellant and members because of their employment outside the "Union Shop," moonlighting?

H. Does a practice, which has gone on for many years, gain legality, respect merely because of its age, to wit:. Article IX, Section 1, paragraphs 1, 2 and sub-paragraphs (a) & (b) of the Constitution of 1965. And can an erroneous interpretation continue forever because of the age of the interpretation, the Union members rights not-with-standing?

CONSTITUTIONAL PROVISIONS

There are no State or United States Constitutional provisions involved herein.

STATEMENT OF THE CASE

The basis for Federal jurisdiction in the Court of first instance is conferred by public law 86-257 Labor-Management Reporting and

disclosure Act of 1959.

This is an application for the writ of Certiorari to the United States Court of Appeals, Tenth Circuit, and it grew out of a decision of the United States District Court for the District of Colorado wherein Ralph Williams filed suit against International Typographical Union, AFL-CIO, and Denver Typographical Union, a local union of the International Typographical Union - AFL-CIO alleging in substance the following, to wit:

That the court had jurisdiction of the case.

That he was a member of the Union and had been for 8 years and that for 6 years past he was classified as "Working at Trade" and paid dues and assessments upon that classification.

That in March, 1965, he was reclassified by the Union, without his approval or consent, to

"Not at trade" and thereafter he was forced by the Union to pay dual dues or dues twice. That this was not reasonable but was arbitrary and capricious and contrary to Union Law and in violation of Public Law 86-257, Title 1, Section 101 (a) (1) and (2).

That he lost priority (seniority) wages and overpaid dues and assessments. He lost time, he worried and suffered embarrassment and humiliation, he was put to expense of litigation and he has not been able to enjoy the benefits of his priority (seniority) and other Union advantages.

Plaintiff prayed to be restored to the proper classification of "Working at trade", return his priority (seniority), the return of dues and assessments overpaid to the Union, that he be compensated for lost wages and general damages

of $850,000.00 and $25,000.00 exemplary damages as well as attorney fees, cost and other relief.

The complaint was in three courts and was amended on or about September 1, 1967 to show, that Plaintiff had exhausted all of his internal union remedies through grievance procedure and that more than 4 months had passed since the iniation of the first grievance.

The trial court entered an order on January 1968, granting a motion to strike exemplary damages and denying all other grounds of said motion.

The defendants answered and in their answer to the Amended Complaint Appellees generally denied the Appellant's allegations and stated that the complaint failed to state a claim on which relief could be granted.

Pre-Trial Order

Pursuant to a pre-trial conference the Court entered a pre-trial order, which provided, inter alia:

That the Appellant had been a member of Denver Typographical Union No. 49 since November, 1963. That prior to July, 1964, Appellant was classified as "Working at Trade." Appellant has exhausted his internal union remedies. Appellant on or about March, 1965 was classified as "Not at Trade."

That Appellant has paid dues as a "Not at The Trade" member.

That Appellant works and has worked regularly for several years at a government job.

The pre-trial order was approved as to

form and content by attorneys for the parties.

The Court ruled subsequently that the Appellant's demand for exemplary damages was improper and that exemplary damages would not be permitted.

The Evidence.

The Appellant Ralph L. Williams has followed the printing trade since 1917 (p. 15). Ralph L. Williams has been employed as technical writer for the U. S. Bureau of Reclamation full time at a salary of Twelve Thousand Seven Hundred and no/100 ($12,700.00) Dollars per year since April 10, 1962 (p. 14).

Ralph L. Williams has been a printer employee of the Rocky Mountain News since June 10, 1965 (p. 15).

Ralph L. Williams is a member of Denver Typographical Union a Local of the International

Typographical Union AFL-CIO.

The ITU Constitution contains classifications of members (A) Working At Trade, and (B) Not Working At Trade (p. 21).

Ralph L. Williams was classified as "Working At Trade" before September, 1964 (p. 25). He paid dues based on printing trade earnings. In March of 1965 Ralph L. Williams was given a "Not At Trade" classification (p. 27). He protested and exhausted internal union remedies. His cost was approximately One Thousand Six Hundred and no/100 ($1,600.00) Dollars (p. 28).

The Union denied Williams' grievance.

As a result of being classified "Not at Trade," Ralph L. Williams lost voting rights (p.29), priority (seniority) used in bidding jobs, etc. and paid dues under both (A) "Working At

Trade" and (B) "Not Working At Trade," Section IX, p. 10 of the Union Constitution (p. 21). In effect Williams paid more than double normal dues (p. 21). Dues under (B) were paid on money Ralph L. Williams did not earn (p. 58). Ralph L. Williams was denied all types of "priority" to bid jobs (p. 44), also (p. 47). He lost earnings in the amount of Eight Thousand Four Hundred Eighty Two and 12/100 ($8,482.12) Dollars (p. 62). (References such as (p. 62) refer to transcript page number.)

After exhausting his internal union remedies Ralph L. Williams sought relief in the U.S. District Court under 29 U.S.C.A. Bill of Rights Provisions of Labor Management Reporting and Disclosure Act. The lower Court held that Mr. Williams' rights under the act were not violated.

Opinion of Trial Court

In the opinion filed January 9, 1969 by Judge Chilson of the United States District Court, the facts generally are not in controversy. After stating the background of Mr. Williams as a printer and the conditions under which he was employed, the Court said that the constitution of both the local and international unions provide for several classes of membership. Two of these classifications are here involved and are commonly referred to as those members "working at the trade" and those "not at trade."

"As a result of this classification, the Appellant lost all rights to priority (seniority) of employment as under the union rules only members classified as "working at the trade" had priority rights. Consequently, Appellant could be and can be employed only after the employ-

ment of all those classified as "working at the trade." The lack of priority has an adverse effect upon the amount of employment the Appellant can obtain.

"In addition, the Appellant was and is required by the defending unions because of his classification of "Not at trade" to pay two assessments for the old age pension and mortuary funds of the union; one upon his total earnings as a printer and the other computed upon "the maximum scale (for day work) of the union--" His maximum scale is the amount computed by the union that a member "working at the trade" would earn during a certain period if he devoted his full time to the occupation of printer.

"One classified as working at trade is required to pay an assessment only on his total earnings as a printer irrespective of whether

or not he earned the "maximum scale."

"The Appellant contested both his classification and the two assessments and in so doing he exhausted the internal union remedies available to him. Being unsuccessful the Appellant instituted this action pursuant to 29 U. S. C. A. 412 and alleges that the Appellees by the classification and the two assessments violated the rights granted to him by 29 U. S. C. A. 411(a)(1), (2), (3), and (5)."

In considering the classification the opinion then points out that Article IV, Section 1 of the International Constitution (Exhibit 1) was adopted in 1927 and became effective in 1928. After providing for a per capita tax of $1.00 per month per member Section 1 provides in part:

Article IX Paragraph 2 Sub. para. a & b.

"An additional assessment for the old ag

pension and mortuary funds according to the following classifications:

"(a) Active members (including members working at the trade and seeking work at the trade) 2-1/2% upon total earnings."

"(b) Active members not working at the printing trade (members whose cards are deposited with a subordinate union who follow other pursuits and members not s seeking work at the printing trade)--2-1/2 % upon the maximum scale (for day work) of the union with which member is affiliated."

To the above the plaintiff appellant appealed to the United States Court of Appeals, Tenth Circuit.

The said Court of Appeals affirmed the lower court. The Decision is made a part of

this application as Appendix A Infra 2.

It is from the decision of the U.S. Court of Appeals dated March 19, 1970, that this application for certiorari stems and plaintiff appellant respectfully shows this Court the following, to wit;

SUMMARY OF REASONS FOR ALLOWANCE OF THE WRIT

Certain provisions of the labor-management reporting and disclosure Act of 1959, 73 Stat 519 29 U.S.C. Sec. 411-531 (see 411 The Bill of Rights) are involved weighing the rights of individual members of a Union, especially appellant, to have the right to work, the right to freedom of assembly and speech and not be forced to pay double Union dues as a penalty for moonlighting.

To ascertain if a Union, pursuant to 73 Stat. 519, has the right to forfit the priority

(seniority) of a member because he is moonlighting.

To ascertain if a Union may change the classification of a member because he has moonlighted.

To ascertain if a union may punish a member for moonlighting by increasing his dues to 10% of his income from his employment under the guise of forcing him to contribute to two old age pensions and to death benefits as an orderly re-classification of a printer because of his other job.

To ascertain if a unlawful act gains respect a legality with the passage of time and nothing more.

Can a Union impose a dual classification upon a member and force him to submit to and pay Union dues under both classifications as a

condition precedent to employment.

Can the Union lawfully classify appelant in both "Not at Trade" and "Working at Trade" at the same time.

To determine if the lower courts could recognize "Implied offenses" against the Union by appellant.

ARGUMENT OF REASONS FOR ALLOWANCE OF WRIT

Could the union lawfully classify Williams in both "Not at trade" and "working at trade" at the same time?

The International Constitution of the union was adopted in 1927. In 1945 this Constitution was interpreted by the Executive Council and the interpretation of the Executive Council was in effect at various times since 1945. See Black's Law Dictionary on meaning of interpretation and

Union Trust Co. 151 N.Y.S. 246. Interpretation "is concerned only with ascertaining the sense and meaning of the subject matter. Interpretation stops at the written word." We do not quarrel with the right of the Constitution to determine classifications of members. We believe that the Union through its constitution had the power to have two classifications; namely, "working at the trade" and "not working at the trade." But there the power stops! No man can be both.

Further, we agree that the Executive Council had the authority granted to it by the Constitution to interpret the laws of the union expressed in the Constitution. We believe that this power granted to the Executive Council was limited and did not permit the council to rule by fiat. In King v. Randoza, 346 F. 2d, 307, the Court stated that Section 101 (a)(3) of the Bill of

Rights of the Labor-Management Reporting and Disclosure Act 29 U. S. C. A. Section 411 intended to insure that dues would not be imposed upon union members by the mere fiat of their officers. Plaintiff, Appellant herein has been assessed twice.

Speaking of the Executive Council's power on p. 309 the Court said of the action of the Executive Council that comes within the terms of Section 101 (a)(3), "there must be express authority in the action of the constitution or the bylaws. The Defendants cite provisions which give the Executive Council all executive, legislative and administrative authority to effectuate the powers granted to it by the Constitution."

We agree with Judge Barr when he said that the requirement of express authority is not met by such general grants of power particularly

when it refers to a provision relating specifically to the imposition of additional dues, see Riviello v. Journeymen Barbers, 240 P.2d 361.

Other examples of the Executive Councils amending of the Constitution are found in the Answer of Mr. Lewis, a Union witness p. 146 of the Transcript when he said "The Executive Council says he should be available, he should seek work and make proper effort to secure work so this would normally fall in a five-day category." Other examples of amendment rather than interpretation are found in the circular which was made an exhibit by the union which says "not all trade members shall be eligible for employment at the trade in any week wherein they have been employed five days at any other trade, craft or calling except at overtime rates." This is not an interpretation of the constitution, this is an

amendment of the constitution and none of the items that are talked about are to be found anywhere in the constitution, especially sub-paragraphs a & b of Article IX.

Since the e are amendments and not interpretations, it cannot be held that the rules are "reasonable rules found in the organizations constitution and bylaws." The Bill of Rights in Section 411 requires that reasonable rules and regulations be found in such organizations constitution and bylaws, and we submit that double assessments is not a reasonable construction of Article IX.

The trial court agreed with us. In the opinion on p. 7 the court says "it is doubtful that the language of Section 1 of Article IX permitted such an interpretation and if such interpretation had been made after the effective date

(Sept. 14, 1959) of Section 411 (a)(3) the validity of assessing members "not at trade" under subsection (a) would be questionable to say the least."

The point we make here is that the interpretation was not a lawful interpretation when it was originally made. We disagree with the trial court when the trial court says that because the unlawful interpretation or "amendment" was made before September, 1959, that it somehow assumes lawful validity today.

We submit that age will not make white black, nor just in just to that which is illegal, legal.

Appellant contends that classifications(a) and (b) of article IX, par. 2, are mutually exclusive. Williams can be in one or the other, but not both. The appellees have treated Williams as though he were in both classifications. He is

paying 2 old-age and 2 death assessments.

Futher, the Constitution says that "an additional assessment, 'not assessments, shall be made. To put Williams in two classifications would require a plural of the word assessment.

Moreover, Williams qualifies for classification in (a). Plaintiff's Exhibits 4, 5, 6, 7 show that Williams appeared for work assignments regularly and Williams testified to this fact. See testimony on p. 40, 45, 46, 47, 54, 93. Only the union's arbitrary classification prevented Williams from obtaining regular position as a printer. Williams had a long history of association with the printing trade as owner and publisher p. 1 - 16. In fact, his employment history shows that Williams has been in the printing trade the major portion of his work history. He was active in the printing union,

holding union positions and serving on committees, p. 80, 81.

Clearly Williams meets the requirements to be classified in (a) "working at trade."

The arbitrary and capricious nature of the Union ruling placing Mr. Williams in two classifications (a) and (b) is demonstrated by the fact that Williams was required to pay double mortuary taxes and pension fund assessments. Obviously Williams could die only once and collect only one pension. The result of putting Williams in (a) and (b) (either of which provide for dues based on 2-1/2% of earnings) was to require Williams to pay 10% of earnings for Union dues. There is no provision of the Constitution which allows tithing to be required by the ITU.

The Constitution is a contract between

the Union and its members, Adams v. IBB, 262 F. 2d; Farowitz vs. Association of Musicians, 330 F. 2d 299; Smith vs. General Truck Drivers Union Local 467, 181 Fed. Supp. 14. Contract law itself does not permit one party to unilaterally amend the agreement between the parties.

Furthermore, the equal rights section of the Bill of Rights in the Labor-Management Reporting and Disclosure Act provides that every member of a labor organization shall have equal rights and privileges to vote, to attend membership meetings and participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

The rules attempted to be applied to Mr. Williams are neither reasonable nor are they found in the organization's constitution and

bylaws.

The Appellant argues that it is not reasonable for the union to require him to divulge whatever activities he may have, economic, social or political outside of the organization of the Union. Mr. Williams is entitled to privacy in his life. If he is active in other spheres, that is his concern and not the concern of the Union. If he complies with all of the requirements of a regular member working at the trade, we feel the Union has no cause for complaint or inquiry.

Appellant states that placing Mr. Williams in the classification of "not at trade" was a disciplinary act of the union which required compliance with 29 U.S.C.A., Section 411(5) Safeguarding Against Improper Disciplinary Action.

We direct the Court's attention to p. 135 of the Transcript and the testimony of Mr. Payne,

a union witness. Mr. Payne stated that the authority for Mr. Williams' denial of his right to vote on scales and wages and other business of the union was found in Article VIII, Section 10 of the Bylaws under Discipline General. Article VIII of the Bylaws (entitled Discipline), contains sixteen (16) sections all of which are typically found to contain such words as conviction, suspension, expulsion, trial boards, unlawful, guilty of a violation of this section and fines, suspensions and various other penalties in every paragraph. It's quite clear that this Article is based upon discipline as its title suggests.

It is in this Article Section 10 that Mr. Williams was penalized and was not permitted to vote on matters pertaining to wage scale.

In addition to this penalty, other penalties were invoked (p. 29). Williams was denied the

right to vote on the contract, denied membership in his local chapel, denied the right to vote for his chapel chairman and he was denied the right to pay his dues through the chapel, but had to send it by mail to another address. He also lost all priority Mr. Williams also lost the right to earn regular wages commencing December 5, 1965 as he pointed out on (p. 40) and (p. 54). It cannot be successfully argued that these provisions were necessary to protect the job rights of those who are, as the Union representatives stated, primarily concerned with the employment in the printing industry.

These are not reasonable rules and regulations found in the organization's constitution and bylaws to protect regular members.

These interpretations are similar, if we are to accept the Union's reasons, to a fine for nonattendance at a meeting of the Union. Such a

fine has been held not reasonable, National Automotive Fibers, Inc., 121 NLRB 1358; Food Machine and Chemical Corporation, 99 NLRB 1430; Electric AutoLite Company, 92 NLRB 1073, p. 14. In the latter case, classification and distinction must be reasonable the Court stated.

Further, in Riviello v. Journeyman Barbers, supra, the Court said "construction of the constitution by the President and Executive Board must be a reasonable one." and further, "we must consider the constitution as we find it."

The Courts have also held that under certain circumstances union interference with employment opportunities of its members may constitute "discipline" within this section pertaining to safeguards against improper disciplinary action, Figuerosa v. NMU, (1965)342 F. 2d 400.

In Figueroa, moreover, the court held

that the court would protect the "membership rights" to the procedural safeguards laid down by Section 104(a)(5) as a condition to union discipline.

Mr. Figueroa's outside union activity consisted of a narcotic violation. The union then removed his name from an employment list. The court found that the safe guards of Section 104(a)(5) applied and ruled for the complainant.

As to other cases of "other wise disciplined see Deluttery v. Maring Cook Union, 199 Fed. Supp. 27, 273 (S.D., Calif. 1961). Gross v. Kennedy, 183 Fed. Supp. 750(755-56)(S.D., N.Y. 1960).

The Court held that cases presenting an employment problem may be adjudicated by Federal Courts for alleged violation of procedural rights guaranteed by the Labor-Management Reporting and Discovery Act. In this case the

Court found, "it is no defense to an action based upon a failure to observe the procedure requirements of the LMRDA, Section 101, (a)(5) for a union to allege or prove that it has disciplined a member for legitimate union purpose..."

"Question where the union's act is disciplinary in nature within the Landrum-Griffin Act is to be determined by its practical effect." The court said in Rekant v. Shochtay-Gasos Union, 205 Fed. Supp. 284(1962) U.S. District Court, Pennsylvania. The practical effect of the union's classification of Mr. Williams under paragraph (a) and (b) was disciplinary in nature. While Mr. Williams was not fined, he was cut off from many advantages and benefits that were given generally to other union members. Williams was cut off from rights that were guaranteed him by the Landrum-Griffin Act.

In the above case it was held that the words "otherwise disciplined" applied whenever discipline is imposed upon a union member in any manner other than suspension. It is true that Mr. Williams was not suspended but he certainly did suffer penaltids.

The words "otherwise disciplined" are contained in the Labor-Management Reporting and Disclosure Act which states in Safeguards Against Improper Disciplinary Action "no member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues by such organization, or b by any officer thereof, unless such member has been served with written specific charges, given a reasonable time to prepare his defense and afforded a full and fair hearing. See Detroy v. American Guild, 286 F.2d 75; Parks v Inter-

national Brotherhood of Electrical Workers, 314 F. 2d(886) 922 (1963); Rekant v. Shocktay-Gasos Union, 205 Fed. Supp. 284; Simmons v. Local 713 Textile Workers, 350 F. 2d 1012.

Websters Third International Dictionary defines discipline as "to impose a penalty in any way by infliction of extra tasks or by loss of privileges" p. 645. In Detroy v. American Guild, supra, the union's action in placing the Plaintiff's name on an unfair list was held to constitute disciplinary action within the meaning of 101(a)(5).

In the above case it was again held that whether the action was disciplinary in nature is to be determined by the practical effect. By the act of the union, American Guild, Destroy lost his then existing right to share work. This was of immediate consequence to him and it was held a disciplinary act. In this regard we also cite

Farowitz v. Association of Musicians of New York, 330 F.2d 999 (1964), U.S. Court of Appeals, Second Circuit, April 29, 1964.

In a very ambiguous way Williams, the Appellant, was accused by union officials of having outside pursuits and outside employment without specific written charges. Williams was denied an essential element in the grievance machinery, which was guaranteed to the Appellant by law. On page 57 of the Transcript the Appellant testified he was never given written specific charges of any nature connected with his classifications or discipline.

In Simmons v. Avisco TWU of America, 350 F.2d, 1012, the Court held "the union could not discipline its members except for offenses stated in its constitution and bylaws."

"It is established law that a union cannot

discipline its members except for offenses stated in its constitution and bylaws, and that the courts lack the power to recognize "implied offenses" and thereby rewrite the union's constitution and bylaws. Simmons v. Local 713, Textile Workers (supra), Allen v. Int'l Alliance of Theatrical etc., 338 F.2d 309 (1964 5th Cir.). Summers "Legal Limitations On Union Discipline" 64 Harv. L. Rev. 1049 1058-62 (1951).

We submit that there is no portion of the union's constitution which makes moonlighting, or having an outside job, a violation of the constitution or bylaws to such an extent that he may be punished by being forced to pay TWO old age and TWO death assessments.

The Appellant believes it was error for the Lower Court to rule and the Court of Appeals to sustain, that he was not denied equal rights

under 29 U.S.C.A., Section 411(a)(1) when he was required to pay double dues, but denied voting membership and job bidding rights. Section 411 of the Bill of Rights(a)(1) titled Equal Rights, states that every member of a labor organization shall have equal rights and privileges within the such organization, to nominate candidates, to vote in elections of referendums of labor organization, to attend membership meetings and to participate in the deliberations and voting of the business of such meetings.

Under the following section (2) Freedom of Speech and Assembly, is set forth that every member of any labor organization shall have the right to meet and assemble freely with other members to express any views, arguments or opinions, etc.

Mr. Williams was denied right to be a

member of his chapel, denied the right to vote on the contracts, denied the right to vote on the chapel chairman, who was his direct representative in the union, denied the right to pay dues as others did and, in addition, lost all right to bid upon jobs.

He was also required to pay dues upon money he did not earn. We believe that these acts of the union did deny Mr. Williams the rights that other employees had who were members in the ITU.

What the union, in effect, said to Mr. Williams was, "if we don't like what we hear that you are doing outside of your job, even if it does not affect your work, we will impose upon you penalties without charges, without a hearing and without any proof on our part other than what we believe to be true." Mr. Williams was singled out for this treatment, notwithstanding the fact that, many other members, Mr. Williams testified,

also had outside employment.

We also feel it was error on the part of the Court to hold in its' affirmance of the trial court, that imposition of the dual classification was not in effect, a dues increase requiring the applications of the provisions of 29 U.S.C.A., Section 411(3)(b). There can be no argument that the effect upon Mr. Williams of this dual classification was to cause him to pay approximately 10% dues while other people were paying 2-1/2% based on earnings, and he could get old only once and die only once.

To argue that this imposition had been in effect before the law LMRDA was passed did not change the results as far as Mr. Williams was concerned. For Mr. Williams his dues increased tremendously.

Under what authority did the union impose

these dues upon Mr. Williams? If, as the union states, the imposition of the dues was a general policy of the union, then this policy is not based upon constitutional authority and certainly is open to question. When the policy was put into effect, either in 1942 prior to the act, or later, is immaterial. Section 411 (a)(3) states that in case of a federation or a national international labor organization, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased and no general or special assessment shall be levied upon such members and then gives exceptions.

Appellant contends that the two dues and initiation fees attempted to be applied to Mr. Williams were not proper and were not in effect on September 14, 1959, but were imposed by the

union upon Mr. Williams illegally sometime after that date as a punishment for moonlighting.

In the opinion of the lower Court it was stated "however more than fourteen (14) years elapsed between the interpretation and the effective date of Section 411(a)(3). In the absence of evidence to the contrary the Court infers that the membership, by its failure to take action to disavow this interpretation, accepts it as a part of the dues and assessment provisions of the union." The appellant Court erred in affirming this propersition.

Appellant believes that this inference accepted by the Court is error. In Rekant v. Shocktay-Gasos Union Local 445 previously cited as 205 Fed. Supp. 284 (1962) the Court stated: "A 'Bill of Rights' provision requiring due process and manifestly based on high considerations

of public policy intended to protect individuals from group oppression should not be deemed to be waived - even if it could be waived - without evidence affirmative and clear which would justify such a finding." It is the Appellant's position that the Appellant could not waive the statutory requirements of the Labor-Management Disclosure and Reporting Act even if he wanted to, nor could the union membership by acquiescence. The rulings of the union in the form of interpretations were not proved to be accepted by the membership by affirmative and clear evidence or evidence of any kind.

Appellant contends that he was entitled to prove certain elements of worry, humiliation and embarrassment as an element of his damage. The Court of Appeals held

> . . . we believe that Congress did not in-

tend that the Act be an invitation to the Courts to intervene at will in the internal affairs of unions and that general supervision of unions by the Courts would not contribute to the betterment of unions or their members, or at the cause of Labor-Management relations. . .". This is error when applied to this case: Simply because the Congress did not intend the Courts should be denied to a union member when he has been forced to pay thousands of dollars to two old age pensions and two death funds as a punishment for being industrious enough to work 8 hours a day "at the trade" in the union shop.

We contend that Congress did not intend that redress should be denied the individual union member for the sake of happy Labor-Management relations. When has there ever been happy Labor-Management relations? It was the intent of Con-

gress to protect the Unions, the Managements and the Individual from each other by passing the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. Sec. 411.

The Court of Appeals held that "...in our opinion the provision requiring the classification of those with other full-time employment as 'not at the trade' is a reasonable one..."

IF THIS WERE ALL, THE COURT OF APPEALS WOULD BE CORRECT, however, they did not see that our complaint is that we are classified as "Not at the Trade" and "At the Trade" and that we are paying two assessments, one on each and that this is a punishment.

The Court of Appeals overlooked that there was never any showing that the "legitimate purpose of attempting to give the work of the trade to those who held full-time positions elsewhere"

and if there had been such showing, there would and could be no showing of justification for the double old age and death assessment being charged.

To charge a man 10% of his income to work at the trade is "blacklisting".

The Court of Appeals committed harmful error when it held that a man who worked a second full-time employment is a subject to reclassification as "Union members who admitted narcotics convictions..." because of the self admittance of the two employments.

To take the comparison of a felon as opposed to a hard, 16 hour a day, working man, and conclude that both are equally subject to reclassification because of self admission, is to build the decision on a foundation of mud. It can only sink. Indeed, the decision of the Court of

Appeals started sinking at this point. The decision got worse because of the false premis that a man who works 2 jobs at 16 hours a day is on the same level as a Felon.

The unfairness of the entire decision passed of the above Felon theory is pointed up by the statement of the Court of Appeals, to wit:

"The evidence from the unions was that those not primarily dependant on the printing business for their livelihood, a characteristic found in the not-at-the-trade classification, do not have the vital interest in wage scales which is present in those who are first and foremost printers.

The Court assumed that Appellant was of the former group and not of the last. The Court forgor, or, in its comparison of the appellant to a felon, assumed that his moonlight job was his

primary job, but there was no evidence of this premise. The evidence showed that the appellant made 8 full hours a day as a printer and that there was no surplus of labor.

The Court of Appeals assumed the worst of the appellant and assumed him out of court the evidence notwithstanding.

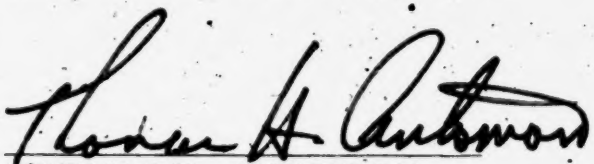
The Court in comparing the appellant to a felon and in building the decision on a foundation of mud justified themselves into the forfiture of thousands of dollars paid into two old age pensions and two death funds by one man, and the Court excused the loss of voting rights and forfiture of future earning by reason of deminished priority (seniority) on the false premise that the appellant had admitted himself out of the protection of the act as did the felons who had narcotics convictions when the evidence clearly showed that this was

not so.

CONCLUSION

For the reasons above stated, this petition for certiorari should be granted.

Respectfully submitted,



THOMAS H. ANTONION
Attorney for Appellant

812 Fifteen Peachtree Building

Atlanta, Georgia 30303

Telephone 525-3574

I, Thomas H. Antonion, Attorney for Appellant, hereby certify that I have served counsel for Respondant with a copy of this petition for a Writ of Certiorari by placing same in a properly stamped and addressed envelope directed to him and depositing same in the United States mail.

All parties to be served have been served.

This 12 day of June, 1970.

Thomas H. Antonion

THOMAS H. ANTONION

APPENDIX A

JUDGMENTS AND OPINIONS BELOW

INFRA ONE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Ralph L. Williams,	)	Civil Action
	)	
Plaintiff	)	No. 67-C-334
	)	
VS	)	
	)	
International Typographical Union, AFL-CIO, and Denver Typographical Union, a local union of the International Typographical Union - AFL-CIO)	)	
	)	JUDGMENT OF DISMISSAL
Defendants	)	

PURSUANT TO and in accordance with the Memorandum Opinion and Order of Court heretofore entered; it is

ORDERED that the action and complaint filed herein is hereby dismissed; and it is further

ORDERED that the defendants have and recover of the plaintiff, above-named, their costs to be taxed upon the filing of a Bill of Costs.

DATED at Denver, Colorado, this 10th day of January, 1969.

BY THE COURT:

/s/ Hatfield Chilson
HATFIELD CHILSON, Judge,
U. S. District Court.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 67-C-334

Ralph L. Williams,
Plaintiff,

VS

International Typographical Union, AFL-CIO, and Denver Typographical Union, a local union of the International Typographical Union - AFL-CIO,
Defendants

Mr. Milnor H. Senior, Attorney at Law, Suite 2317, 1700 Broadway, Denver, Colorado, for Plaintiff; Mr. Jack Henderson, Attorney at Law, First National Bank Building, Denver, Colorado, for Defendants.

MEMORANDUM OPINION AND ORDER

CHILSON, Judge.

By this action, plaintiff, a member of the

defendant unions, seeks redress for alleged invasions by the defendants of the rights guaranteed to him by 29 U.S.C.A. · 411, [1] the Bill of Rights provisions of the Labor-Management Reporting and Disclosure Act.

---

1. Subchapter II. - Bill of Rights of Members of Labor Organizations.

411. Bill of rights; constitution and bylaws of labor organizations.

(a) (1) Equal rights. - Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly. - Every member of any labor organizationshall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization his views, upon any business properly before this meeting, subject to the organization's established

The matter came on for trial before the Court on January 6, 1969.

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1. (Cont'd.)

and reasonable rules pertaining to the conduct of meetings; Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, initiation fees, and assessments. Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except -

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organiza-

The facts essential to a disposition of this action are not in conflict. Since 1917, the plaintiff has, from time to time, been employed as a printer and has been a member of printer's unions. Since November 1963, the plaintiff has been a member of the defendant, Denver Typographical Union (local union) which was then and now is a union "chartered by, subordinate to, and working under the jurisdiction ---" of the defendant, International Typographical Union (International Union) see Exhibit 2, page 3.

---

1. (Cont'd.)

tions, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret balot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the con-

The Constitutions of both the local and international unions provide for several classes of membership. Two of these classifications are here involved and are commonly referred to as those members "working at the trade" and those "not-at-trade" (N. A. T.).

---

1. (Con't.)

stitution and bylaws of such labor organization; Provided, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) Protection of the right to sue. - No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting

Since 1962, the plaintiff has had full-time employment as a technical writer with the Bureau of Reclamation of the Federal Government, and since 1963, has also worked as a printer at nights and at other times when his employment with the Bureau of Reclamation permitted.

---

1. (Cont'd.)

legal or administrative proceedings against such organizations or any officer thereof: And provided further, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) Safeguards against improper disciplinary action. No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall

During a portion of the year 1964, and prior thereto, plaintiff was classified by the union as a member "working at the trade"; but on or about March 1965, because of his full-time employment by the Bureau of Reclamation, plaintiff was classified as a member "not-at-trade."

As a result of this classification, the plaintiff lost all rights to priority (seniority) of employment, as under the union rules, only members classified as "working at the trade" have priority rights. Consequently, plaintiff could be and can be employed only after the employment of all those classified as "working at the trade." The lack of priority has an adverse effect upon the amount of employment this plaintiff can obtain.

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1. (Con't.)

be of no force or effect. Pub. L. 86-257, Title 1, 101, Sept. 14, 1959, 73 Stat. 522.

In addition, the plaintiff was and is required by the defendant unions, because of his classification of "not-at-trade," to pay two assessments for the old-age pension and mortuary funds of the union; one upon his total earnings as a printer and the other computed upon "the maximum scale (for day work) of the union---." This maximum scale is the amount computed by the union that a member "working at the trade" would earn during a certain period if he devoted his full time to the occupation of a printer.

One classified as "working-at-trade" is required to pay an assessment only on his total earnings as a printer, irrespective of whether or not he earned the "maximum scale."

The plaintiff contested both his classification and the two assessments and in doing so he exhausted the internal union remedies available

to him. Being unsuccessful, the plaintiff instituted this action pursuant to 29 U.S.C.A. 412, and alleges that the defendants by the classification and the two assessments have violated the rights granted to him by 29 U.S.C.A. 411(a) (1), (2), (3), and (5).

We first consider the classification. Article IX Section 1 of the International Constitution (Exhibit 1) was adopted in 1927 and became effective in 1928. After providing for a per capita tax of one dollar per month per member, Section 1 provides in part:

> "An additional assessment for the old age pension and mortuary funds according to the following classifications:
>
> "(a) Active members (including members working at the trade and seeking work at the trade) - Two and one-half percent upon total earnings.
>
> "(b) Active members not working at the printing trade (members whose cards are deposited with a subordinate

union who follow other pursuits, and members not seeking work at the printing trade) - Two and one-half per cent upon the maximum scale (for day work) of the union with which member is affiliated."

In the constitutions of both the international and the local unions are referred to as "subordinate unions" and it is clear that the reference to "a subordinate union" in subsection (b) means the defendant local union and other local unions of the International. Plaintiff has testified that he has deposited his cards with the defendant local union and that he has full-time employment at a trade other than the printers trade.

It is not the province of this Court to determine the wisdom of these membership classifications which the unions have established. It is only for this Court to determine whether or not the union's classification of members into "working

at the trade" and "not-at-trade" violates the Bill of Rights contained in Section 411. We have been cited to no case law, and we have found none, which questions the right of the union to provide for more than one class or category of members. The purpose of the classifications here involved is to give employment preference to those members who do not follow other pursuits. In the opinion of the Court, the classifications here involved are not unlawful, nor do they violate any rights granted to the plaintiff by Section 411. In the circumstances of this case, the classification of plaintiff as a member "not-at-trade" was reasonable and was not arbitrary or capricious and was not violative of plaintiff's rights under Section 411.

We next consider the plaintiff's complaint that the assessments upon him pursuant to both

subsections (a) and (b) of Section 1 of Article IX of the International Constitution violate the rights granted to him by Section 411.

We find nothing in the International Constitution which authorizes assessment under subsection (a) of members classified as "not-at-trade." The defendants justify the assessment under subsection (a) by an "interpretation" of Article IX adopted by the Executive Council of the International Union on January 10, 1945, which states:

> "Members regularly employed at other occupations who accept employment at the printing trade are required to pay the assessments upon earnings at the printing trade in addition to assessments required of members classified as "N. A. T." "

Although the Executive Council is given authority by Section 8 of Article X of the International Bylaws to "interpret and construe the

laws ---" of the International Union, it is doubtful that the language of Section 1 of Article IX permitted such an interpretation, and if such interpretation had been made after the effective date of Section 411 (a)(3) (September 14, 1959) the validity of assessing members "not-at-trade" under subsection (a) would be questionable to say the least.

However, more than fourteen years elapsed between the interpretation and the effective date of Section 411 (a)(3). In the absence of evidence to the contrary, the Court infers that the membership by its failure to take action to disavow this interpretation, accepted it as a part of the dues and assessment provisions of the unions. In the circumstances of this case, the Court concludes that on September 14, 1959, the interpretation of January 10, 1945, was a part of

the "rates of dues", and the assessment of the plaintiff as a "not-at-trade" member under both subsections (a) and (b) of Section 1 of Article IX of the International Constitution did not constitute an increase in the rates of dues over those in effect on September 14, 1959. The Assessment of plaintiff under both subsections (a) and (b) was not a violation of the plaintiff's rights under Section 411 (a)(3).

The unions' classification of plaintiff and the two assessments levied on plaintiff under subsections (a) and (b) did not violate or invade any rights granted to the plaintiff by Section 411 (a)(1) and (2) and there is no evidence of other acts constituting a violation thereof.

The plaintiff also contends that, in classifying the plaintiff as "not-at-trade" and in making assessments upon him under both subsections (a)

and (b), the defendants were conducting disciplinary proceedings against the plaintiff without complying with the requirements of Section 411 (a)(5). Although it is apparent that the plaintiff and the union have been engaged in controversy for some considerable period of time, there is no evidence to justify this conclusion. The basis for the assessments goes back to 1945 when the Executive Council of the International made its interpretation of the assessment of members "not-at-trade." The definition of a member "not-at-trade" which was applied to plaintiff was contained in the International Constitution adopted in 1927. The fact that there may be ill will between the parties, in the circumstances of this case, does not convert the legal acts of the union in classifying and assessing the plaintiff into a disciplinary proceeding requiring compliance with

the procedures in Section 411 (a)(5). The Court concludes that the plaintiff's rights under said section have not been violated by defendants.

The Court finds the issues herein for the defendants and against the plaintiff and determines that judgment of dismissal of the plaintiff's complaint should be entered and that the defendants are entitled to judgment for their costs.

IT IS THEREFORE ORDERED that judgment of dismissal of the plaintiff's complaint be entered, and that the defendants have judgment for their costs to be taxed by the Clerk of the Court upon the filing of a bill of costs.

Entered this 9th day of January, 1969.

BY THE COURT:

/s/ Hatfield Chilson
United States District Judge

APPENDIX A

INFRA TWO

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JANUARY TERM, 1970

Ralph L. Williams, Plaintiff-Appellant	)	
V.	)	No.
International Typographical Union, AFL-CIO, and Denver Typographical Union, a local union of the International Typographical Union - AFL-CIO, Defendants-Appellees	)	229-69

Appeal from the United States District Court
for the District of Colorado

(D. C. No. 67-C-334)

Milnor H. Senior for Appellant

Jack D. Henderson, of Robinson and Henderson, for Appellees.

Before BREITENSTEIN and HOLLOWAY, Circuit Judges, and CHRISTENSEN, District Judge.

BREITENSTEIN, Circuit Judge.

The plaintiff-appellant claims that he has been denied rights guaranteed to members of labor organizations by Section 101 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411. Jurisdiction lies under 29 U.S.C. 412. The district court held in favor of the Unions and dismissed the action. Williams v. International Typographical Union, D. C. Colo., 293 F. Supp. 1346. The plaintiff's basic complaint is that the 1965 change in his membership classification deprived him of rights guaranteed

by the Act.

Plaintiff has worked at the printing trade intermittently since 1917. At pertinent times, his employment as a printer was with one of Denver's daily newspapers. His present affiliation with the International Union dates from 1959 and with the Local Union from 1963. Since April 1961, plaintiff has held a full-time job with the United States Bureau of Reclamation as a technical writer. In the vernacular, he has also been moonlighting as a printer.

The constitution and laws of the Unions recognize membership classifications which include "working at the trade" and "not working at the trade." Plaintiff was classified as "working at the trade" until March, 1965, when the Unions became aware of his full-time job with the United States. His classification was then changed to

"not working at the trade." The change affected his union assessments, his voting rights, and his priority. Plaintiff appealed this action to the International Convention, which denied his claims. It is stipulated that he has exhausted his union remedies.

The main thrust of plaintiff's argument is that the reclassification was disciplinary action within the meaning of the Act. Section 411(a)(5) provides that a union member "may not be fined, suspended, expelled, or otherwise disciplined" unless he has notice of the charges, time to prepare a defense, and a full and fair hearing.

The rights granted by the Act are specific. We believe that Congress did not intend that the Act be an invitation to the courts to intervene at will in the internal affairs of unions and that "(g)eneral supervision of unions by the Courts

would not contribute to the betterment of unions or their members or to the cause of labor-management relations." Gurton v. Arons, 2 Cir. 339 F. 2d 371, 375. See also Schuchardt v. Millwrights & Machinery Erectors Local Union No. 2834, 10 Cir., 380 F. 2d 795.

The question is whether the reclassification is discipline. In our opinion the provision requiring the classification of those with other full-time employment as "not at the trade" is a reasonable one. In New York Typographical Union Number Six, 144 NLRB 1555, 1558, petition to review denied, Cafero v. National Labor Relations Board, 2 Cir., 336 F. 2d 115, the National Labor Relations Board considered an unfair labor practice charge against the unions based on the reclassification of a member as "not at the trade." The Board said that the

action taken by the unions was "for the legitimate purpose of attempting to give the work of the trade to those who presumably needed it, rather than to those who held full-time positions elsewhere."

We agree with the Board's characterization of the purposes underlying the classification scheme. Thus, the case at bar is not like Detroy v. American Guild of Variety Artists, 2 Cir., 286 F. 2d 75, cert. denied 366 U.S. 929. There the court held that the blacklisting of a union member was discipline requiring compliance with 411 (a) (5). The curtailment of an individual's employment opportunities to the benefit of others economically more dependent on the printing trade, as was done by the Unions here, is not to be compared with the extreme effects of blacklisting.

The classification regulation was fairly

applied to plaintiff. No showing is made of any improper motivation, of any discrimination, or of any intent to punish the plaintiff by depriving him of privileges. The Unions simply enforced their rule pertaining to members having full-time employment outside the printing trade.

It is of some importance that plaintiff readily admitted his government employment prior to his reclassification and has done so ever since. The admission precipitated the reclassification. In Figueroa v. National Maritime Union of America, 2 Cir., 342 F.2d 400, union members who admitted narcotics convictions claimed that they were disciplined when the union, acting in accordance with the collective bargaining agreement and the declared policy of the shippers not to hire any narcotics violators, refused to refer them for employment with the shippers. The

court disagreed, saying that the members' self-admitted disqualification kept the action from being discipline. Had they contested the fact of conviction, the court said they would have been entitled to the procedural safeguards of 411(a)(5).

The concurrence of the above circumstances-the regulation's reasonableness, its fair application, and plaintiff's admitted outside employment-convinces us that the reclassification did not amount to discipline. In this situation, the procedural safeguards would be of no help to plaintiff. If he were given a hearing, he would be unable to show that the regulation did not apply to him, and, in light of the union's initial decision to reclassify him and our conclusion that the scheme is reasonable, it can hardly be urged that he could successfully assert that for some reason it should not be applied to him. We also

note that he did press the latter point, unsuccessfully, in his appeal to the International Convention. Because we cannot attribute to Congress an intention to provide procedural safeguards where there is nothing to safeguard, we conclude that where a reasonable regulation is applied in a fair and just manner to one who, by self-admission, is covered by it, such application does not come within the statutory phrase "otherwise disciplined."

Plaintiff says that, in violation of 411 (a) (1), the Unions have wrongfully denied him the right to vote on wage scales. That section provides that every union member shall have equal rights to participate in and vote at membership meetings "subject to reasonable rules and regulations in such organization's constitution and bylaws." We assume that the right to vote includes the right to vote on wage scales. This right may be re-

stricted by reasonable rules and regulations. See Calhoon v. Harvey, 379 U.S. 134, 138-139, and Navarro v. Gannon, 2 Cir., 385 F.2d 512, 519, cert. denied 390 U.S. 989. The question is the reasonableness of the International's regulation prohibiting a member classified as "not at the trade" from voting on wage scales. The evidence for the Unions was that those not primarily dependent on the printing business for their livelihood, a characteristic found in the not-at-the-trade classification, do not have the vital interest in wage scales which is present in those who are first and foremost printers. We believe that the regulation is reasonable and does not violate the Act. Cf. Allen v. International Alliance etc., 5 Cir., 338 F.2d 309, 319.

The reclassification also resulted in plaintiff's loss of priority to the detriment of his em-

ployment opportunities. The Act does not explicitly create an equal right to priority and such right, by its very nature, cannot be inferred. The creation and operation of priority rights are within the expertise of labor organizations. Here, the loss of priority was because of a reasonable regulation which was fairly enforced. The union action did not deprive plaintiff of any right guaranteed by the Act.

Loss of priority also meant that plaintiff was no longer entitled to membership and voting rights in his local chapel. The chapel is a subdivision of the Local Union and is found in each business which has a contract with the Local. Section 402(i) defines a labor organization as one "which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay,

hours, or other terms or conditions of employment, *** ." These functions are performed by the Local, not by the chapels. They appear to exist mainly to collect dues and keep earning records, for the benefit of the Local. In our opinion, a chapel is not a labor organization within the meaning of the Act and the deprivation of rights which pertain thereto do not violate the Act.

Section 411(a)(3) provides that dues shall not be increased and assessment shall not be levied except by vote of the members. Plaintiff says that the assessments against him as a not-at-the-trade member violate that section. The constitution of the International provides that those classified as working at the trade shall pay 2-1/2% of their total earnings as contributions to the old age and mortuary funds. Members not working at the trade are assessed 2-1/2% of the

maximum wage scales for those funds. In 1945 the Executive Council, which as authority to "interpret and construe" the laws of the International, ruled that those not at the trade had to pay both on their earnings and on the maximum wage scale.

Plaintiff urges that the ruling of the Executive Council was an amendment of the union constitution rather than an interpretation. We are not concerned with whether the Executive Council exceeded its authority but only with whether the ruling violates the Act. See Gurton v. Arons, 2 Cir., 339 F.2d 371, 374. We agree with the trial court that the requirements of 411(a)(3) are applicable only to dues increases and assessments made after the effective date of the Act, September 14, 1959. Plaintiff complains about rates of assessment which have been effective

since 1945. The fact that his individual rates have been increased since 1959 is immaterial. Section 411(a)(3) does not apply to individual increases resulting from a change in classification. The argument that a member may not be treated for the purposes of the assessments as both at trade and not at trade is unpersuasive. Nothing in the Act forbids such union action.

The claim that plaintiff was denied rights to freedom of speech and assembly secured by 411 (a)(2) is not sustained by the record. A union official testified that plaintiff participated in chapel meetings and expressed his point of view. We find no evidence to the contrary.

Affirmed.

APPENDIX B

INFRA THREE

STATUES

The applicable provisions of Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519 U. S. C. Sec. 411-531 are as follows, to wit:

Sec. 411. Bill of Rights; Constitution and Bylaws of labor organizations.

(a)(1) Equal rights. - Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly. - Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the reasonability of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, initiation fees, and assessments.

Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except -

(A) In the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good-standing voting in a membership referendum conducted by secret ballot; or

(B) In the case of a labor organization, other than a local labor organization or a federation of national or international labor organiza-

tions, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: Provided, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) Protection of the right to sue. - No

labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organization or any officer thereof: And provided further, That no interested employer or employer association shall directly or indirectly finance,

encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) Safeguards against improper disciplinary action. - No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (c) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect. Pub. L. 86-257, Title 1 101, Sept. 14, 1959, 73 Stat. 522.